UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

UNITED STATES POSTAL SERVICE **and** **NATIONAL ASSOCIATION OF LETTER CARRIERS, MERGED BRANCH 19**	**Case 34-CA-012912**

AFFIDAVIT OF SERVICE OF: COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE and COUNSEL FOR ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF ADMINISTRATIVE LAW JUDGE

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 14, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

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COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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I. STATEMENT OF THE CASE

This brief is filed in support of Counsel for Acting General Counsel's exceptions to certain portions of Administrative Law Judge Ray Green's Decision and Recommended Order issued on April 16, 2012 in the above case, including his failure to grant the appropriate remedy.

The case involves a Complaint and Notice of Hearing which issued on June 29, 2011 based upon an unfair labor practice charge initially filed on February 9, 2011 by National Association of Letter Carriers, Branch 19, (herein the Union), as later amended, alleging violation of Section 8(a)(1) and (5) of the Act by the United States Postal Service (herein Respondent or USPS)(GC Ex. 1). The Complaint, as amended at trial and by the withdrawal of certain allegations, alleges that Respondent violated Sections 8(a)(1) and (5) by failing to furnish certain information, and failing to timely provide other information, since various dates in 2010 and 2011, as enumerated in paragraphs 10(a), 11, 12, and 13. These involve events at the Mt. Carmel and the Dixwell Avenue branch facilities of the New Haven Post Office.[1] In this brief, the Complaint, as finally amended, is referred to as the "Complaint".

The Judge recommended the conclusion that Respondent violated Section 8(a)(1) and (5) by its failure to timely furnish TAC ring information related to Jess Friedman's December 17, 2010 assignment grievance (Complaint paragraph 12(c) (ALJD 11:17-47; 16: 10-15).

The judge recommended dismissal as to the allegations involving Emond (Complaint paragraph 13(a)); express mail (Complaint paragraph 12(a),(d) and (e)); router time (Complaint paragraph 13(b) and (c)); Jess Friedman's December 20 assignment (portions of Complaint

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[1] None of the amendments entailed Complaint paragraphs 1 through 9 or the requested remedy. The Complaint was amended on two trial dates as follows:

1) December 13, consistent with a Notice of Intent to Amend dated December 1, GC Ex. 3(a), and a Revised Notice of Intent to Amend dated December 13, GC Ex. 3(b) (Tr.7, 20); and*
2) January 9, 2012 (consistent with a Notice of Intent to Further Amend dated January 9, 2012, GC 3(c) (TR. 627-628).

In its brief to the administrative law judge, Counsel for Acting General Counsel withdrew the allegations of the Complaint, as amended, contained in paragraphs 10(b), 11(c), 12(a)(2), 12(b), 12(f) and 13(d) and the corresponding paragraph references in conclusory paragraphs 15 and 16. Also, attached to that brief for reference was an appendix which reflected, for paragraphs 10 through 17, (original numbering retained) the remaining Complaint allegations as amended in their final form as of the date of the brief to the judge. Due to space constraints, that appendix is not included herein

paragraph 11(a)); Loretta Gray-Williams warning (portions of Complaint paragraph 11(a)); and Gray-Williams overtime assignment (Complaint paragraph 11(b)). Counsel for Acting General Counsel excepts to the recommended dismissal of all of those allegations, except that involving forced overtime at Dixwell Avenue, and certain related findings or omissions of findings.

As more fully set forth in Section III below, the remedy sought, but not granted by the judge, is for all relief as is just and proper, including an Order requiring Respondent to make a New Haven, Connecticut Post Office- wide posting of a Notice to Employees, rather than a more limited posting, and to send the Notice to New Haven supervisors.

Counsel for Acting General Counsel files exceptions because the judge ignored pertinent facts and arguments, made up defenses for Respondent that it never advanced, usurped the right of the parties' to make their own agreements and altered their grievance practices, and relied on rationales unsupported by the evidence. Further, he failed to grant the remedy that proper findings and conclusions warrant.

II. FACTS AND ARGUMENT IN SUPPORT OF EXCEPTIONS[2]

A. Introduction

In his account of the facilities involved, the contract provisions, and the workings of the grievance procedure, the judge omits certain facts, presents an artificially rosy picture of the resiliency of the grievance procedure in the face of delays, and fails to make findings as to a prior Formal Settlement and interchange of supervisors, managers, and carriers among the New Haven Post Office facilities, facts which have direct bearing on the remedy (ALJD 3-6).

The judge properly referenced contract Article 31 as containing a provision relating to information requests as well as the Joint Contract Administration Manual (JCAM)provisions (ALJD 5: 34-45). Yet contract Article 17 " Representation", Section 3, also describes union representatives' rights to documents, files and other records, and states that such requests "shall not be unreasonably denied" (GC Ex. 2(a), page 84). Also the related JCAM concerning

[2] All dates are in 2010 unless otherwise specified.

Article 17, provides more detail, and even lists 17 examples of the types of information covered by the provision – including disciplinary records and overtime desired and work assignment lists (GC Ex. 79). Further, it is actually the JCAM for Article 17 (GC Ex. 2(b) 17-6), not contract Article 31, as the judge stated at ALJD 5: 34-41, that contains the important provision he quotes there –

> Management should respond to questions and to request for documents in a cooperative and timely manner. When a relevant request is made, management should provide for review and/or produce the requested documentation as soon as reasonably possible.

The Judge overstates some points about the parties' grievance process. Specifically, with respect to the Informal Step A, Formal Step A, and Formal Step B, he describes the parties as "typically" extending various grievance processing deadlines (ALJD 4: 43-45; 5: 8-10, 23-25). Rather, the record evidence as a whole simply shows that "sometimes", not "typically", the parties agree to extensions. The distinction has significance, because the judge's recommended dismissal of certain allegations appears to reflect a sense that the delays at issue do not make a difference, because the system routinely works with delays. To the contrary, the delays in supplying information and the resulting extensions and remands bog down the process and force the Union to repeatedly request and track information that should have been readily supplied. Union Formal Step A representative Fruin testified about being backlogged and desperate for information to get out from under (Fruin, Tr.173). There is a "human" toll to some delays – for example, when, as discussed below, carrier Emond was out of work he was on unpaid leave and waited almost a year for financial relief (Fruin, Tr. 196).

Also, extensions of time for filing grievances to secure information the Union had requested just keep the grievance alive with the status quo; the process is stopped, and grievances aren't being resolved (Fruin, Tr. 199). With multiple grievances being held up with "extensions of time", a backlog develops yielding long delays without resolutions (Fruin Tr. 199-200). Indeed, the backlogs, which may have more than one cause, are reflected in the record (See e.g. GC Ex. 9, 11, 18, 41, 49, Fruin, Tr. 196-197).

Significantly, the contract provides at Article 15, Section 3, that the parties recognize their obligation to achieve the end of settling grievances at the lowest possible step (GC Ex. 2(a), page 70). Further, at Article 15, Section 5, the parties "recognize their continuing joint responsibility for efficient functioning of the grievance procedure and effective use of arbitration (emphasis added) (GC Ex. 2(a), page 77).

As to the need for documentation, Brumleve testified that when he goes into the Informal Step A meeting, he wants to be fully prepared (Brumleve, Tr. 321). If a matter is not resolved, he passes up a complete grievance case file to Formal Step A (Brumleve, Tr. 324). At Formal Step B, even if Respondent representatives do not dispute a point, the Union must still prove everything (Fruin, Tr. 186-188).

The composite evidence reflects that the Respondent often has not taken its duty to supply information seriously. It needs to be redirected by the Board.

B. The requests for information involving the Emond matter

The allegations involving the Emond matter are contained in Complaint paragraph 13(a)(1) which asserts a failure to timely provide certain TACs rings for the period beginning June 24, 2010, and paragraph 13(a)(2), which asserts a failure to timely provide mail volume reports for June 24-July 31, 2010, and paragraph 16.

TAC rings are technically employees time swipes of employees as they start, end, and make movements (including among assignments and location) during the day. The parties dealing with the allegations involved in these exceptions used the term TACs more loosely, typically referring to the "employee everything report" ,which encompassed TAC rings and leave time information. (The judge deals with part of this in his decision (ALJD 1-14). Herein, "TACs" and "employee everything report" are used interchangeably.

The Union requested this information in relation to the Respondent's June 23, 2010 action sending home carrier Gilbert Emond, based on its claim, under a new policy, that he was not able to work at all because of medical restrictions.

Indeed no TACs for the period in question were supplied by Respondent until four and one- half months after the initial request. This data turned out to be incomplete, missing about a month. The missing month was supplied over 6 months from the initial request. The mail volume reports were not supplied until at least two and one half months after the request.

The pertinent grievance was belatedly resolved in September 2011 at Formal Step A by an agreement to make whole Emond for lost pay from June 23, 2010 until his October 8, 2010 return to work, as well as to restore the leave time he had used when he was out.

There is no evidence that Respondent, in its dealings with the Union, ever sought clarification of the request, explained the delay in providing the information, or challenged the relevance of the information.

1. Facts concerning the Emond matter

On June 23, 2010, the Respondent issued to letter carrier Gilbert Emond a "Notice of No Work Available" (GC Ex. 58). It declared that there was "no work available" for Emond "within the operational needs of the service" (GC Ex. 58, Soto, Tr. 726-728). In its notice, Respondent asserted that this determination was based on a review of current operational needs, and among other things, cited Emond's current medical documentation and its search for assignments within the local commuting area.

At that time, Emond was working at the Mt. Carmel, Hamden, CT branch of the New Haven Post Office. Until June 23, Emond, a long-term carrier, had been regularly working delivering mail despite an ankle injury, basically as a "light duty employee" (Fruin Tr. 51-53, 63, Soto Tr. 726- 727). There had been no change in Emond's condition triggering the Respondent's missive (Soto, Tr. 728). Rather, Respondent took this action as part of its implementation of a new policy contained in the National Reassessment Program (NRP) (Soto, Tr. 727).

At trial, Union Formal Step A Representative David Fruin concurred with the judge's characterization that the USPS position was that Emond did not have the physical ability to do

any work for the USPS (Tr. 55-56). However, there was admittedly a dispute over what work Emond could and couldn't do, and about whether there was work at the Mt. Carmel facility or other New Haven branch facilities which Emond could still perform within his medical limits (Soto, Tr. 729, Fruin, Tr. 57-59, 911-912). Emond had problems with stairs, and in the Union's view, one of the questions was whether or not there was work available to Emond without his negotiating stairs, such as "casing mail", i.e. sorting it into delivery sequence (Fruin, Tr. 906-912, 105). However, Alex Soto, who was Mt. Carmel's acting manager at the time, testified that "from what the doctor wrote down, he couldn't walk at all..." (Soto, Tr. 678-679). The Union grieved because it disagreed with management's contention that there was no work available within Emond's restrictions (Fruin Tr. 56).

Within a day or two of Respondent's June 23 notice to Emond, Representative Fruin discussed the matter with Acting Manager Soto, and noted that the dispute about the matter was going to require many documents (Fruin, Tr. 78-79). Because Soto was so familiar with the issue, Fruin asserts that Soto would have been very much aware that the inquiry would involve documents dating from June 24 forward (Fruin, Tr. 78-79).

After Emond was placed on administrative leave for two weeks, he continued on the Respondent's roster using a combination of annual leave, sick leave, and leave without pay (Fruin, Tr. 51). Ultimately, after providing some documentation, Emond returned to work at a different facility on about October 8 (Fruin, Tr. 100-101).

a. The grievances and the information requests for certain TACs

In July and September, in response to Emond being sent home, Mt. Carmel Steward Kevin Brumleve, filed four differently framed grievances at informal step A- two in July and two on September 1 (Fruin, Tr. 53, GC Ex. 4, 5, 6 and 7). On August 20, in between those sets of grievances, Steward Brumleve submitted the Union's initial written request for information (GC Ex. 8, Soto, Tr. 720-721). Brumleve's request noted there was an alleged "Article 19 (NRP)"

violation, and asked for the "following relevant information" needed in order to investigate/process a grievance:

1) Copies of TAC Rings for Mt. Carmel office from 6/24/10 to present;
2) Or the opportunity to review, delete, or download on to disk drive.

Thus, at that point, Brumleve was seeking TACs documents spanning from June 24 to August 20, i.e. the period which Emond had thus far been out of work.

In about November, Fruin took over handling the Emond matter because Brumleve had had no success securing the requested TACs (Fruin, Tr. 55, 64-65). On November 22, not having received any of the TACs requested on August 20, Fruin drafted a document titled "Grievances at Formal Step A Mt. Carmel as of 11/22/10" which addressed several issues involving multiple pending grievances (GC Ex. 9, Fruin, Tr. 170-176). The document began with a statement "This document serves as Request for union time/information for the below listed: (emphasis added) and included a list of pending grievances.[3] The list included the four grievances pending about the Emond matter, and stated "**requested information not provided**/further develop ".

On November 23, Fruin gave the document to Acting Manager Soto, who was also the USPS Formal Step A Representative. They discussed it. Soto granted a grievance time extension until December 20 (GC Ex. 9, Fruin, Tr. 68, 170-176). By this time, three months had elapsed since the TACs had first been requested.

Fruin testified that it was the end of the year, and although there were staffing problems, the information was readily available; the process was backlogged, and he pleaded with Soto to help him out with the information (Fruin, Tr. 175).

In the November 22/23 follow-up, Fruin did not again specify the dates of the TACs he was requesting (which had expanded at least to cover the period until Emond's October 8 return to work) (GC Ex.9). However, there is no record evidence of any outstanding information request concerning the Emond matter other than the August 20 request for the TACs beginning

[3] There is no requirement that information requests use a set form (Fruin Tr. 170-171).

June 24. Fruin orally reminded Soto what documents he had not received (Fruin, Tr. 78-79). This was not rebutted; Soto could not recall if on November 23 Fruin had specified the dates he was looking for, and only testified that he and Fruin didn't get into details (Soto, Tr. 731). Soto was initially evasive about whether he knew the issue was the availability of work for Emond beginning June 23, but finally implied that he did know (Soto, Tr. 732,734-737).

On November 30, Fruin submitted another information request concerning the Emond matter, as discussed below, but it did not refer to the TACs. At some unknown date after the information was received, Fruin opted to pursue only one of the four grievances, No. 19-981-10 MTC (GC Ex. 7) that best described the claimed violation, and eventually withdrew the others (Tr. 55. 165). The retained grievance gave 6/23/10 as the incident date, with the issue being whether management had violated any of multiple contract articles, manuals, handbooks etc., "when they withdrew the modified/limited duty job offer from the grievant and sent him home with a 'notice of no work available'? And if so, what shall the remedy be?" (GC Ex. 7)

b. Respondent belatedly provides the TACs

On January 4, 2011, Respondent for the first time supplied some of the requested TACs reports (Fruin, Tr. 80, 179-181). This was four and one-half months after the Union's August request and one and one-half months after the Union's follow up November request! At that time, Acting Manager Soto accepted Fruin's thumb drive (memory stick) and copied from Respondent's records the TACs for the period July 26, 2010 to December 24, 2010 (Fruin, Tr. 179-181; Soto, Tr. 679, 735; GC Ex. 10(a)).

The data supplied on January 4, 2011, however, turned out to be an incomplete response to the Union's clear August request for TACs beginning June 24. The printout did not cover the important first month that Emond had been out of work, i.e. the period June 23 to July 25, 2010 (Fruin Tr. 81-84, GC Ex. 10(a)). Fortunately, the data did encompass the rest of the period up to the August request date and the period up to (and past) Emond's October 8 return to work. When Fruin discovered the omission of the June 24-July 24 period, he brought that

matter to Soto's attention, as USPS Formal Step A Representative (Fruin Tr. 94). In this regard, on February 18, after the February 9 filing of the instant charge, Fruin gave Soto yet another document which listed multiple grievances held at Formal Step A as of February 18, with the preface "This document serves as request for union time/information for the below issue", and then made express reference to "TACs" among the information not provided on the Emond grievance (GC Ex. 11, Fruin Tr. 94). Specifically the document stated "Emond requested information not provided/further develop CA-17s/2499sTACS/Daily Schedules". Fruin then also spoke to Soto about the omission of a month of data.

Thereafter, on March 1, 2011, Soto supplied the missing month of TACs (Fruin, Tr.94, Soto Tr. 735, GC Ex. 10(b)). Despite Soto's improved turn-around time in responding to the Union's mid-February follow-up, the fact remains that Soto's delayed five and one-half months in supplying what, with even limited attention, he could easily have supplied back in August when the request was fresh and finite. Respondent introduced no evidence about any reason for the long delay, and never asserted that it could not have been supplied all the TACS in August by simply copying them onto a storage device as Brumleve had proposed initially. Further, if Soto had responded promptly to Fruin's November 22/23 follow-up, rather than waiting until January 4, 2011, Fruin could have pointed out the omission of the month data (June 24-July24) early on.

There is no contention, nor evidence, that at any point in its communications with the Union that Respondent sought clarification, described any obstacles to supplying the TACs, or explained the delay in doing so. At the time, Respondent never questioned the relevance of the requested TACs (Fruin, Tr. 912). Indeed Soto testified that he never questions relevance (Soto, Tr. 737).

c. <u>Request for the mail volume reports</u>

On November 30, Fruin submitted another written request bearing on the Emond matter (GC Ex. 10). It encompassed two matters – the Emond matter (as stated on the document-

"Emond NRP") and a "Router grievance", which will be addressed later in this brief. As to both these topics, Fruin requested three categories of information 1) mail volume reports, 2) daily schedules, 3) OTDL split and N/S lists. As to the Emond matter, the Complaint only alleges violation as to the mail volume reports.

The first line of the request contains the preface "Emond NRP and router grievance July 31 to the present" (GC Ex. 10). Fruin testified that although he did not, on the November 30 request, enter the span of dates he was requesting for the listed documents bearing on the "Emond NRP" matter, and only gave dates for the "router grievance" (namely July 31 to the present), Soto was well aware that on the Emond matters he was requesting the documents for the period beginning June 24, because Soto had been Acting Manager at Mt. Carmel when Emond had been sent home under NRP on June 23, was present on that day, even talked about it before that day, and spoke with Fruin the next day (Fruin, Tr. 78, 200). Further, Fruin testified that over time he had conversations with Soto about the dates he needed, and that he told Soto that he needed the mail volume reports (and the daily schedules) from the date they sent Emond home June 23 (Fruin, Tr. 78-80). This testimony is unrebutted. Further, as noted above, Fruin had discussed with Soto the need for documents close to the time that Emond was "walked out" under the NRP policy (Fruin, Tr.68-79).[4]

d. <u>Respondent belatedly provided the mail volume reports</u>

Mail volume reports are readily available (Fruin, Tr. 98). They are electronic records (Fruin, Tr. 182-183). Despite this, no mail volume reports for the period specified were supplied by Respondent until a period beginning in February/ March 2011; most were received by the end of March 2011 (Fruin Tr. 98-99). They were not supplied until after a new supervisor, John Greco, came into the Mt. Carmel station in late February; Fruin gave Greco a copy of the same

[4] As Fruin testified, Soto knew Emond had been sent home on June 23, after which Emond's status was in dispute, whereas Soto knew July 31 was the effective date of the unrelated router agreement. Thus, Soto could be expected to understand that reference in the preface to "beginning July 31" did not apply to the Emond TACS, but rather to the router information.

November 30 request he had earlier given to Soto, and again asked for the documents. (Fruin Tr. 98-99) [5] This testimony was not rebutted. Indeed Greco was not even called by Respondent.

Thus the mail volume reports were not supplied until at least two and one-half months after the November 30 request tied to the Emond grievance. Complaint Paragraph 13(a)(2) only alleges unlawful delay as to a subset of the mail volume reports, i.e. those for the period June 23 to July 31. The record evidence supports that allegation. Respondent never told Fruin it did not understand these requests or disputed their relevance. (Fruin, Tr. 201-203; 912). This is unrebutted.

e. Resolution of the Emond grievance

The Emond grievance was finally resolved at Formal Step A in September 2011, with back pay/restoration of leave for the period he was out of (Fruin, Tr. 166, 903-904).

In this regard, eventually, after Fruin got the TACs, mail volume reports and other information from Respondent, he used these when he sat down with Respondent to settle the grievance (Fruin, Tr. 167-168). He used the TACs to establish the periods Emond had been out, demonstrate that work was available during those periods, and calculate back pay and restitution of benefits (Fruin Tr. 167-168). The TACs, supplied as an "Employee Everything Report", included the leave status of Emond as well as other carriers, and reflected which carriers were assigned to what work. Also, Fruin used the mail volume and other documents/reports to show the management representative in discussing the grievance with the Respondent in advance of settlement. Id.

f. The Union's reasons for requesting the TACs rings and Mail Volume reports their relevance

At heart, the Emond matter was a dispute about whether or not, at the time Emond was sent home, and during the period he was out, there was work available to him within his medical

[5] There is some indication in the record that these mail volume reports were supplied on about March 25. In this regard, when Fruin gave testimony about the router grievance (discussed below), he explained that the large 6-8-inch packet of various categories of documents supplied to him by Greco on March 25 (GC Ex. 20 consisting of excerpts) included documents bearing on router grievance and other grievances, including mail volume reports (Fruin, Tr. 148-149).

restriction. The crux of Fruin's cogent testimony is that in order to investigate and to support the merits of a grievance, he sought the documentary tools to establish that during the entire period Emond was out, there was such work (Fruin,Tr. 58-60, 70-77, 101, 167-168, 183, 903-910). Further, Fruin sought that information to establish the remedy by documenting when Emond was out of work and what type of leave time Emond had utilized when he was out. *Id.* The merits and the remedy were inextricably linked –any remedy would be limited to any periods work was available, and Fruin had to figure out Emond's leave status during those periods.

As to the tasks that Fruin thought Emond could have performed, examples were casing mail; delivering mail on "mounted" routes or on routes with minimal walking; and working at several facilities without stairs. The record as a whole concerning workings of the post office, including scheduling, last minute schedule changes, vacation and leave time of multiple carriers, and mail volume, reflect that the availability of "open" work that Emond could arguably have performed could have changed on a daily basis. These categories of data implicitly go to the merits of the grievance.

The TACs requested for Mt. Carmel carriers (17 or so carriers working daily) would document the period that Emond was excluded from work, and also show what work the other carriers were performing inside or outside the office; this could be linked to whether any of that work was available and within Emond's restriction (Fruin, Tr. 58-59, 167 –169, 905). For example, the TACs would show whether Steward Fruin's own route had been open during periods when Fruin was out, and potentially establish that Emond could have done Fruin's route (Fruin, Tr. 168-169, 904-905). Emond's TACs would also document for the remedy the categories of leave designated on those dates, e.g. administrative leave, sick leave, vacation and leave without pay.

The requested mail volume reports, which are generated electronically each day, would show whether, on the days Emond was out, there was mail "left behind" in the station after the other carriers "left for the street", mail which Emond could have "cased" in the office within his

medical restriction (Fruin, Tr. 70- 74). There is a formula for translating the number of pieces of mail "left behind" into man-minutes or hours of casing work. *Id*. Also, because an issue for Emond was negotiating stairs, the Union sought to establish that Emond could have been assigned to work in the multiple facilities that had no stairs; mail volume would show if there was sufficient such work (Fruin, Tr. 907).[6]

The crux of Fruin's testimony was initially corroborated by Soto's simple testimony on direct examination, in response to Respondent counsel's question "....can you explain how TACs rings or mail volume reports would have been relevant to Mr. Edmond's situation?" Soto answered, "Well a volume report would have shown the work available, if he was able to get around the building, like he could have done. And the TACs rings would have shown who did the work or open jobs." (Soto,Tr. 678). However, Soto then asserted that all the jobs would have required at least an hour of walking; Soto then shifted gears, claiming that daily schedules and TACs reports would not have been relevant to Emond because of the walking requirements (Soto,Tr. 677-679). He thus flipped to the merits. From the Union's view, everything was open to contest, that is why the documents were requested. Indeed, Respondent never rebutted Fruin's testimony about various categories of work such as casing that do not entail walking nor Fruin's testimony about other potential alternative assignments.

Respondent cannot invalidate the Union's requests for documents simply by its hearsay assertion at trial that the doctor's note said Emond couldn't walk at all and therefore there was no work for him, and that this ended the matter. Respondent never even told the Union that it would not provide the documents on that basis or any other.

Even after Emond was permitted to return to work on October 8, Fruin still had the same use for the TACs and the mail volume reports, both as to the merits and the remedy (Fruin Tr. 904-911). All of the issues were still in dispute as to the period Emond had been out (Tr. 905).

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[6] Trial testimony about there being a lot of work to be done in the post office in general does not constitute evidence for the grievance process about the volume of mail in specific tasks, such as casing mail, that the Union claimed Emond could perform in the "stairless facilities". There is no evidence that the Respondent stipulated in writing to Fruin to any of those facts.

There is no evidence that Respondent conceded the merits of the grievance. The Union still needed to show the availability work for Emond within his medical restrictions, an issue still in dispute (Fruin, Tr. 904-911). The mail volume reports were still needed to prove there was sufficient mail in those tasks. Computation of the remedy still rested on the TACs reports (Fruin, TR. 183-184).[7]

2. The judge's recommendation on the Emond information should be rejected

Ignoring the factual testimony, the judge made an illogical leap and pronounced that the information the Union requested on the Emond matter was not even remotely relevant to the grievance or the remedy, because the only issue in the Emond grievance "was the Post Office's claim that due to Emond's physical condition, he was not capable of doing *any* post office work and had to be put on administrative leave" (ALJD 8: 10-12). The judge reasoned that the only information that would have been relevant was information such as doctor's notes about Emond's physical condition on and after June 23, the day Emond was sent home (ALJD 8: 12-16).

The Judge's recommendations on the Emond matter should be rejected, and a violation found as to the failure to timely supply the requested TACs and mail volume reports. The referenced judge's statement of the issue and of relevance is far too restrictive, ignores the dynamics of the grievance procedure, strips the Union of its right to fashion its own arguments in the grievance procedure and does not comport with the Board's standard of relevance.

The judge's overly restrictive characterization of the grievance issue referenced above is even inconsistent with his initial broader statement that "the dispute involving Emond was

[7] As to any argument that might be made that the daily schedules requested by Fruin on November 30 in relation to the Emond matter were sufficient data for the Union, the argument is beside the point because Respondent had not even supplied the daily schedules, at least as of February 18, 2011 (Fruin, Tr. 97, 184-185 (discussion of documents received March 25). In any case, the daily schedules and TACs are tools to be used together; they overlap, but are not duplicative (Fruin Tr. 97, 197- 198). Further, the standard of relevance is not whether the Union has sufficient data to establish facts or investigate, but it is whether a particular requested item would be useful.

whether or not he was sufficiently capable of walking so as to either deliver mail or to work in the facility doing other tasks. ALJD 7: 11-13). He improperly seizes on Respondent's position on the absence of any work for Emond to be the benchmark for measuring relevance. The judge assumes that during the processing of the grievance, there was no possibility for the Union to convince the Respondent to back off its position that Emond was not capable of doing *any* post office work. Given that Emond had been working as a light duty carrier for years, the potential for a "change of position" was real. The grievance procedure provides a forum for parties to modify their stances and reach resolution. There the parties would explore issues involving the doctor's note and its application, like Soto claim that any carrier work required an hour of walking, as well as Respondent's posture in its June notice to Emond, that there was "no work available" for Emond "within the operational needs of the service", which was a less severe statement than that Emond could not do "any work". If the Union convinced the Respondent, or ultimately an arbitrator, that the Emond could actually do sufficient carrier work or be accommodated, then the Union could still have to show that there was work of that character available for Emond to perform during the period he was kept out. That is precisely what the requested TACs and mail volume reports were tools to show. [8]

Without adequate basis, the Judge also disregarded the relevance of the TACs and mail volume reports to the remedy phase of the grievance. He assumed that the grievance had no merit because of Soto's hearsay description of the doctor's note and claim that all carrier work included at least an hour of walking. Yet if contrary evidence was presented by the Union, or the Employer backed off and granted the grievance, then clearly the Union had to be able to show that during days Emond was out, there was acceptable work available, and the leave time or

[8] The judge adds no legitimacy to his rationale by commenting that "However, the fact is that the employer never claimed that there was not enough work for Emond to do. Indeed, the facility was if anything, suffering from a shortage of personal [sic]" (ALJD 8: 6-8). As he stated elsewhere, the issue was whether Emond was "sufficiently capable of walking so as to either deliver mail or to work in the facility doing other tasks (ALJD 7: 11-13). " The salient point is that, as discussed above, the mail volume reports address the volume of mail in certain tasks, such as mail which was available for "casing", which is not principally a walking task.

leave without pay which had been marked down for each such day.[9] Indeed, Fruin testified that he did use those tools in settling the merits of the grievance and computing the remedy. The fact that the grievance was resolved in favor of Emond receiving compensation/ restored leave time for the period he was out lends some support to the Union's assertion that the requested, readily available documents were relevant under the Board's "liberal , discovery-type standard" acknowledged by the judge (ALJD 2:28-32). In fact, Respondent in its interactions with the Union provided the documents belatedly, and never asserted that they were not relevant. The requested information here easily met the Board's standard of relevance, i.e. that the information must have some bearing upon the issue between the parties and be of probable use to the requesting party. *Bacardi Corp.*, 296 NLRB 1220 (1989); *Pfizer, Inc.*, 268 NLRB 916, 918, enfd 763 F.2d 887 (7th Cir. 1985). Even potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. See *Postal Service*, 332 NLRB 635 (2000).

C. The requests for information concerning the "router" issue

The allegations involve the Respondent's failure to timely provide information- TACs and daily schedules -- bearing on the Union's claim that Respondent at the Mt. Carmel branch was not complying with an agreement to provide something called "router time". The allegations are contained in Complaint paragraphs 13(b) and (c) and conclusory complaint paragraph 16. The Union filed two grievances concerning this matter, one in September and a representative one much later, in February 2011. The Union requested, among other things, TACs reports for a specific period and daily schedules for an overlapping period.

The first batch of TACs data was not supplied for five months after the first request. The daily schedules were not supplied until six months after the initial request. On March 29, the "representative" grievance about the incident was resolved at Formal Step B in favor of the

[9] Although the judge's framing of the grievance issue implies otherwise, in fact Emond was only out on administrative leave for an initial two weeks, and then utilized various other paid and unpaid leave. Accordingly, tabulation of data was required.

Union (GC Ex. 15). There is no evidence that Respondent ever sought clarification of the request, explained the delay in providing the information, or challenged the relevance of the information.

1. Facts concerning "router" requests for information.

Beginning on July 31, an issue arose concerning whether, at the Mt. Carmel branch, Respondent was violating the contract by failing to comply with the terms of the Joint Alternative Route Adjustment Process, or JARAP, an agreement reached by management outside the branch concerning an adjustment of time on routes, which was to take effect on July 31 (Fruin, Tr. 103-105, GC Ex. 15). The Union believed that Mt. Carmel management was not taking the agreed-on action to assign available carriers to do "router time" to cover routes which exceeded normal times. Three hours and 29 minutes of carrier time were at issue (Fruin, Tr. 102-103, 114-123, 124; GC 13 (including text)). "Router time" is a specific duty or function (Tr. 143).

a. The September 4 grievance and the September and November requests for information

On September 4, the Union submitted the first of two grievances concerning the router matter, claiming an incident date of "7/31/10 and continuing"(GC Ex. 14). On September 13, 2010, Fruin submitted a request for TAC rings for the period July 31, 2010 to the present (Fruin, Tr. 133, GC Ex. 12).[10] In this document, the Union also asked for daily schedules and the "ODL Daily n/s & splits", i.e. overtime lists.

On November 22, Fruin drafted a document bearing on multiple grievances -- a follow-up request for Union time/ information (GC Ex. 18). Fruin included express reference to the fact that with respect to the pending JARAP grievance, the TACs, daily schedules and other requested documents had not yet been supplied. On November 23 he gave the document to Manager Soto (Fruin Tr. 140). On it, Soto signed his agreement to a time extension to December 20 for the router and other grievances (GC Ex. 18).

[10] The September 13 request was not expressly alleged in the Amended Complaint as one of the dates on which daily schedules were requested. The September 13 request also requested certain "express mail slips" tied to an unrelated grievance.

On November 30, Fruin submitted to Soto another request for daily schedules (as well as mail volume reports and the ODL split & N/S lists) (Fruin, Tr. 141, GC Ex 19). This one did not refer to the TACs. The preface to the request for listed documents included the phrase "Emond NRP & Router grievance from 7/31/10 to present". Of course at that time the "present" was November 30 (GC Ex. 19), effectively creating an updated request for daily schedules for the period 7/31/10 to November 30, i.e. expanded beyond the September 13 "to the present" date of the prior request.

b. Respondent's long delay in providing the first portion of the TACs data

On February 12, 2011, five months after the initial September 13 request for TACs "from 7/31 to the present" (then September 13), and two months after the November 22/23 follow-up request, Respondent for the first time responded to the router grievance requests. At that time, Respondent supplied the first of two segments of TACs covering the periods sought pertaining to the router grievance; the first segment was incomplete (Fruin, Tr. 134-136, GC 16). It is unclear from Fruin's testimony and the excerpts from the data provided on February 12 just what time frame of TACs was omitted, but the February access date appears clearly on the upper right corner of GC Ex. 16 (Fruin, Tr. 132 -136,188, 207). The data supplied on February 12 did include TAC rings for July 31, i.e. the initial "incident date", as well certain as other dates (Fruin, Tr. 132, 134 -136,188, 207). GC Ex. 16 consists of illustrative excerpts from a larger pool of data supplied, as reflected in non-consecutive page numbering.

Regardless of what was omitted from the February 12 data, the point is that there was an unreasonable, five month delay in the data supplied in response to the September 13 request. Given the lack of clarity as to what was omitted, Counsel for General Counsel is not focusing on the issue of the additional delay until April in providing the omitted TACs. However,

the record evidence clearly supports the allegation in complaint paragraph 13(b) concerning the TACs requested on September 13 –effectively for the period July 31 to September 13.[11]

c. Another router time grievance

On February 15, 2011, just three days after finally getting the first set of TACs in direct response to the router grievance requests, the Union submitted at Informal Step A another grievance on the Router matter, No. 19-174-11 MTC, which became a "representative grievance" as to the ongoing router issue (GC Ex. 13). This grievance (No. 19-174-11MTC) focused on an initial incident of July 31, involving one carrier (GC Ex. 23). This occurred as a result of Fruin and Soto's agreement to deal with one day of router assignment issues at a time (Fruin, Tr. 130; Soto, Tr. 685). They agreed to the filing of four to five individual grievances for the first five days of the alleged ongoing violations (July 31 until about August 5), and that whatever answers they got from the Formal Step B Team about those grievances, would be applied to everything thereafter, i.e., grievances for router issues on days from August 5 until Respondent "changed the rules again" (Fruin, Tr. 130-131, 187).[12]

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[11] At trial there was no testimony about whether the Mt. Carmel TACs data for July 31 to December 24, which Soto supplied to Fruin on January 4, 2011 in relation to the Emond matter (GC Ex. 10(a)) also happened to fulfill the data request for the router matter, i.e. effectively as pled in the complaint paragraph 13(b) - TACs for the period July 31 to September 13. There is no evidence that Soto considered or was aware of this or ever called this to Fruin's attention - or that Fruin realized this. Indeed there is no evidence that Respondent ever did anything other than ignore the Union's request. Thus, this unlitigated possibility presents no defense to Respondent herein. See *United States Postal Service*, 332 NRLB 635, 635 (2000), where the Board rejected a defense that a requested report had actually been supplied, where both parties were unaware that it had already been turned over to the Union, emphasizing several factors, including that the employer never advised the Union that it had previously provided the report. In any event, there was still a three and one-half month delay from date of the router-related request of September 13 until the TACs responding to the Emond matter were provided on January 4, as well as a 6-week delay from the November 22 follow-up request.

[12] Also in evidence is another follow-up information request involving router data dated February 18 (GC Ex. 11). Fruin addressed this in his testimony about the Emond matters, not in testimony about information outstanding on the router matters. The document contains the following entry about the September 4 JARAP router grievance #19-925-10MTC: i.e., the one filed by Brumleve, not the representative one: -"Requested info not provided: Daily schedules/individual day-TACs reports and ODL's". Thus, it appears that at that point the Brumleve-filed router grievance was still pending and the Union was still seeking the information.

At some unknown date, amid discussion between Fruin and Soto, the September 4 grievance as to router events "July 31 and continuing" was withdrawn in favor of this "representative" grievance that focused on the events of one incident on July 31 (Fruin, Tr. 110. GC Ex. 13).

d. The March and April events and the long delay in supplying the daily schedules

On March 9, Fruin and Soto met at Formal Step A, and reviewed the representative grievance document (GC Ex. 13) without resolving the grievance. On March 15, the representative grievance was received at Formal Step B (GC Ex. 15). On March 29, the Step B decision issued a "resolution" in favor of the Union, finding that Respondent "failed to provide router time which was to be provided as a permanent adjustment to a number of routes" (GC Ex. 15). This was the grievance intended to serve as the model for how to resolve other router issues..

In the meantime, on March 25, 2011, six months after the initial September 13 requests and four months after the November requests, the daily schedules were finally supplied by new Mt. Carmel supervisor, John Greco (GC Ex. 20, Fruin, Tr. 148, 184). This evidence was not rebutted by Respondent. The daily schedules are the focus of Complaint paragraph 13(c). On April 9, the second installment of TACs data was supplied (GC Ex. 17, Fruin Tr. 135). Although some of the TACs and daily schedules had not been supplied as of the March 29 Formal Step B decision in the Union's "representative" router grievance, Fruin still needed the documents in order to resolve the other closely related pending router grievances (Fruin, Tr. 203-205). As planned, after Fruin got the Formal Step B decision, the parties applied that to resolve all other pending grievances. Fruin sat down with the mail volume reports and the TACs to show who was working, at which point the parties resolved the rest of the grievances (Fruin Tr. 203-205).

e. The Union's reasons for requesting the TACs rings and daily schedules with respect to the router matter and relevance of this information

The thrust of Fruin's testimony is that the Union requested the TACs and daily schedules for Mt. Carmel (along with the mail volume reports not at issue in the Complaint), in order to document that carriers were not assigned to do router time as the JRAP required, and that there were carriers available who could have been assigned to the router time work (Fruin, Tr. 132-133, 142-143). He asked for the daily schedules to show what individuals were assigned to routes, daily job placements, and who was and was not assigned daily to router time (Fruin, Tr. 142-143). If the documents showed that no carrier actually did the router assignment, that would prove that no one had been assigned, which the Union claimed was required (Fruin, Tr. 142, 913-914). The daily schedules are a snapshot of what went on during a given day -- they would show what carriers were at work and available, who was assigned to what routes, what routes were left vacant, and where carriers were moved to (Fruin, Tr. 142- 143). But the daily schedule has limits – it reflects management's plan, and the carrier's actual hours; thus TACs are also needed to show what finally happened (Fruin, Tr. 145). The documents are inextricably linked. The daily schedules also show who had leave scheduled by day. So they are useful to determine who was available to work, and thus who was eligible for a monetary remedy (Fruin, Tr. 146-147). This is not to say that other documents were not useful evidence. For example, the mail volume reports along with the overtime lists and TACs would show that carriers were available for other work. But the daily schedules are the quickest document to look at to get an idea of what was going on – one sheet as opposed to the TACs' 20 sheets (Fruin, Tr. 915).

Management never sought clarification of the requests or challenged the relevance of the documents requested (Fruin, TR. 201-203).The requested documents were the tools for the Union to muster evidence in support of its router grievances. They were relevant under the Board's broad standard of relevancy.

2. The judge's recommendation concerning the router time information should be rejected.

The judge's rationale for recommending dismissal has several prongs. Basically he concluded that:

> a) the TACs and daily schedules were not untimely supplied because the information was not needed until after a second grievance on the router matter was filed in February 2011 (ALJD 11: 7-12);
>
> b) there is no indication that the Union, during the time that this particular grievance was not pending, made known to management that it nevertheless wanted the requested information in order to investigate the merits (ALJD 11:5-6);
>
> c) when the grievance was "refiled" the parties' representatives promptly assembled all the information to resolve it (ALJD 11: 8-12); Respondent had complied with the Union's request by the Formal Step A meeting on March 9, as shown by the grievance text expressly referring to TACs reports and mail volume reports (ALJD 10: 18-28);and evidently no relevant information was missing (ALJD 10: 37-39);
>
> d) the Formal Step B decision (GC Ex. 15) listed all the documents in the file, and there "is no contention that any relevant information was unavailable to the Formal Step B team..." (ALJD 10:36-37); and
>
> e) there was a speedy disposition of the second grievance (ALJD 10: 41-51).

The judge reached a faulty conclusion because he misunderstood some facts and lost sight of others; misread the sequence of events involving the grievances; and created a defense for Respondent that it never advanced for itself.

As to prong "a" and "b" above, the judge lost sight of the fact that the Union's September and November requests for information (GC Ex. 12, 18 and 19), were about ongoing violations "7/31 and continuing" (GC Ex. 14), just like the Union's initial September grievance to which they were linked . Further, the requests remained active even after the Union filed the representative grievance, which was narrowed to one incident date of July 31, as there were other grievances waiting in the wings. Indeed, it was not until February 15, a few days after the Union received the documents that, by agreement, the representative grievance (Exhibit 13) was filed to secure a decision solely about the router events on one date, July 31. On these facts the judge should have assumed that when, on February 12, after months of delay, Respondent first supplied a portion of the TACs on the router time issue, it did so because it

knew the Union still wanted them. Instead the judge assumed without any record evidence, that the grievance was inactive.[13]

Thus it is an inventive leap for the judge to conclude that there is no indication that prior to February the Union still wanted the information - of course it did, there was absolutely no reason for Respondent to doubt that. The ongoing daily router time issues had not been resolved. Critically, Respondent never advanced the judge's excuse to the Union or in this litigation. The judge has invented this rationale without foundation.

As to prong "c" and "d", at the outset, the judge misses the important point that the requested documents remained relevant to the other pending grievances about other incident dates, whose disposition rested on the outcome of the representative grievance, i.e., apparently what Fruin referred to as the grievances for router issues from August 5 until Respondent "changed the rules again" (Fruin Tr. 130-131, 187). Indeed, Fruin testified that after the March 2011 Step B decision, he used the documents that were finally supplied to resolve those pending grievances. The text of the representative grievance (GC Ex.13) only establishes that the Formal Step A team was looking at TACs reports and mail volume reports - they may only have been for July 31, the incident date. The July 31 TACS were sufficient for the representative grievance, but that does not establish that the Union by March 9 had the TACs it needed to deal with the other pending grievances. Furthermore, the second category of documents the Union requested was daily schedules, not mail volume reports. The daily schedules, none of which were supplied until March 25 (a fact based on Fruin's unrebutted testimony which the judge ignored), are not referenced in the representative grievance document (GC Ex. 13). Thus the teams did not have those. Perhaps the judge was mixing up "daily schedules" with mail volume reports.

[13] Indeed this assumption seems to be contradicted by a February 18 renewed request for information on multiple matters (GC Ex. 11) that even after the February 15 filing of the representative grievance still includes reference to the September 4 grievance, as is discussed above in footnote 12.

To the extent that the judge's decision might be read as indicating that he viewed the daily schedules as unnecessary, given that other documents were supplied and the Formal Step B team determined the grievance on the documents they had, that is beside the point. The Union is entitled to have documents that are *useful,* which is not measured by what grievance decision makers ultimately rely upon. As Fruin testified, daily schedules are a useful tool to be used in conjunction with the TACs. They help the steward get his arms around the data. In any litigation, multiple documents are often used in preparation for a case, only some of which are submitted in evidence, and decision makers may base conclusions on only certain pieces.

Further, even after the Formal Step B determination on March 29, the daily schedules and TACs remained relevant to resolving other pending grievances which Fruin testified that he needed and used. Fruin had all these documents at his disposal, and even used the TACs to determine who had been working.

As to prong "e" of the judge's rationale, it is also beside the point that the representative grievance was resolved promptly. The record does not disclose what prompted the agreement to use that representative grievance as a guide to resolve other related grievances. For all we know, and entirely plausible, the resolution was linked to the Union finally getting the partial TACS on February 12 for July 31 after many months delay.[14]

D. <u>The requests for information involving the express mail issue</u>

The allegations involving the express mail issues entail the failure to provide certain express mail labels and TACs for multiple days in December. They are contained in the Complaint, as amended, in paragraphs 12(a)(1), 12(d), 12(e)(1)and (2) and conclusory paragraph 15.

The Union believed that at the Mt. Carmel branch, there were many days in December when management was continuing to deliver express mail rather than assigning that work to

[14] Even assuming, for the sake of argument, that the TACs supplied to Fruin on January 4, 2011 in relation to the Emond matter fulfilled these requests in the router time context, there was still almost a 4 month delay from the Union's initial September 13 request.

carriers. It further believed this was in violation of the contract, including Article 1, Section 6, which limits the situations in which management can perform unit work (GC Ex. 2(a). In December, the parties were awaiting an arbitration decision in a "representative" grievance, heard in February, involving express mail which came into the Mt. Carmel station in the morning after the carriers had left for their routes (Brumleve, Tr. 233; Soto, Tr. 716).[15]

In about June or July, Formal Step A Representative Fruin and Acting Mt. Carmel Manager Soto agreed to hold other later-filed express mail grievances in abeyance at Formal Step A pending the outcome of that representative case (Brumleve, Tr. 233-237, 375,410-412; Soto Tr. 715-716). However, the Union continued to investigate the ongoing instances of express mail delivery by managers/supervisors in certain circumstances, to grieve if appropriate, to meet at Informal Step A with management, to amass related evidence and documents, and move the grievance to Formal Step A where it would be held in abeyance and ready to proceed up the steps if the outcome of the pending arbitration so warranted. *Id* Indeed, a bank of "held" express mail grievances was accumulating (see e.g. GC Ex 9 and 11).

Thus, during December 2010 and January 2011, the Union made several requests for information concerning express mail issues arising during December (Brumleve, Tr. 240). The failure to supply portions of that requested information involves express mail deliveries on December 7-10, 15-18, 20-24, and 27-31, i.e. TAC rings and express mail labels for specific dates.

In instances when the Respondent did not provide the requested information, Steward Kevin Brumleve was unable to put the grievances together, file them at Informal Step A, and get them completed to have them moved up to Formal Step A, where they would be held in abeyance (Brumleve, Tr. 375). And as Brumleve pointed out, the express mail grievances were still accumulating.

[15] In that arbitration, a packet of documents was in evidence for the dates at issue which included TAC rings, express mail labels, overtime desired list, and the daily schedules (Brumleve, Tr. 414).

On February 25, 2011, the arbitrator denied the representative express mail grievance, although he noted that there had been missing data in evidence on certain points and that the award was specific to the 11 days contested (GC Ex. 56). The arbitration decision was date stamped as received in the New England Region on a March date (illegible on GC Ex. 56). By the date the decision issued, the Union's requests for Mt. Carmel TACs and express mail labels for the various December dates had been sitting ignored for a period ranging from one and one-half to two months. The loss in arbitration prompted the Union not to proceed with the accumulated express mail grievances and they were withdrawn (Soto, Tr. 715-716, 781). At that point the requested documents, which had never been supplied, were no longer needed, but - as discussed below - that does not end the litigated issue.

The Respondent has never defended that it did supply the information requested in Complaint Paragraph 12, beyond the blanket denial in its Answers, and Acting Manager Soto's vague, unsupported fragment of testimony that he pretty much gave the Union what he had.

In its dealings with the Union, Respondent never sought clarification of these requests, explained why the documents had not been supplied, pointed the Union to other sources of the information or questioned the relevance of the requested information pertaining to the express mail grievance or gave any other explanation whatsoever.

1. TAC rings for December 7-10

The pertinent allegation concerning the failure to supply the TACs for December 7 through 10 is contained in Complaint Paragraph 12(a)(1).[16] The Union made an initial request and two implicit follow-up requests for TAC rings for December 7-10, the delivery dates at issue. The documents were never supplied.

On December 14, Steward Brumleve submitted his first written request (GC. Ex. 35, Brumleve Tr. 241, 247). He cited the topic as "express mail grievance" for December 7, 8, 9 and 10, and asked for express mail scan data sheet, copies of daily schedules, TAC rings for

[16] As noted earlier, Counsel for Acting General Counsel has withdrawn the allegation of Complaint Paragraph 12(a)(2) concerning the updated overtime desired lists for these dates.

those dates, and both updated OTDL lists (GC Ex. 35). He went over it line by line with Supervisor Camerato (Brumleve, Tr. 248).

On January 4, 2011, because Brumleve had not yet received all of what he had requested on December 14, he submitted a second document (Brumleve, Tr. 249-250). By this time he had received the daily schedules, but he had not received the TAC rings (Brumleve, Tr. 249-250.) Specifically, he submitted a Union form with the preprinted title "Request for Union Time" (GC. Ex. 36).[17] There is no contractual requirement that a steward use a specific form for information requests or follow-up communications (Fruin, Tr. 170-171). In addition to asking for Union time, he added the following text - thus calling attention to the fact that information he had requested on December 14 had not been supplied:

> On 12/14/10 I requested 30 plus hours. Since that time I have not received the time or information I requested. The holiday season is over and there is no excuse for not fulfilling [sic] my request. I will be given no other alternative but to work off like before and be paid for that time (*emphasis added*). (GC. Ex. 36)

Although Brumleve was not explicit as to which items were outstanding, he orally told Camerato and Soto that although they had given him the daily schedules from his December 14 request, he was still missing the other information (Brumleve, Tr. 252-253). This testimony was not rebutted by either Soto or Camerato, who Respondent did not call.

On January 25, 2011, Brumleve again followed up by submitting to Respondent another document on a Union "Request for Union Time" form (GC Ex. 37, Brumleve, Tr. 261). As of this point, Brumleve still had not received the TACs rings - or the overtime desired list he had first requested back on December 14 (Brumleve, Tr. 256). On the form, he addressed the outstanding requests for union time, and referenced his requests of December 14 and January 4, thus calling attention to the earlier paperwork. Also, once again, he noted that he had not received requested information (GC Ex. 37). Again, although Brumleve did not specify the particular information he had not received, he orally told Soto that he had not received what he

[17] Initially the judge rejected exhibits 36 and 37, but they were later received at Tr.264.

had requested on December 14 and January 4, and specified the TACs rings and the updated OTDL list (Brumleve, Tr. 257 -259). This testimony was not rebutted.

Respondent never supplied to Brumleve the TACs or the updated overtime desired for December 7-10 that he had first requested on December 14, despite his January 4 and 25, 2011 follow-ups calling these omissions to Respondent's attention (Brumleve, Tr. 274).[18] No one from management explained why the TACs were never supplied them to him or ever challenged the relevance of the documents (Brumleve, Tr. 274).[19]

2. Express Mail labels for December 15, 16, 17, and 18

The pertinent allegation is contained in Complaint Paragraph 12(d). With respect to express mail deliveries on December 15, 16, 17 and 18, Steward Brumleve requested the "express mail labels" for those dates on four occasions –December 20, twice on January 5, 2011, and January 20, 2011 (GC Ex. 43, 46, 45). Express mail labels reflect the name of the recipient and the address to which express mail was delivered. He never received those labels.

Specifically, on December 20, Steward Brumleve made a written request for five categories of information for 12/15, 12/16, 12/17, and 12/18, including "copies of Express labels/Scan Data Sheet." (GC Ex. 43)(The other items for these dates are not the subject of a complaint allegation).

On January 5, 2011, because Brumleve had not received the Express mail labels/Scan data sheet" for those dates, he resubmitted a copy of his one-page December 20 request,

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[18] Although Counsel for Acting General Counsel has withdrawn the complaint allegation 12(a)(2) concerning the updated overtime desired list (OTDL), it is undisputed that it was never supplied. Because the Union did not have the OTDL, the TACs were all the more important. It was missing data to document that carriers were available.

[19] There was no testimony concerning whether certain TACs computer data supplied on a thumb drive to Formal Step A Rep. Fruin on January 4, 2011 in relation to the Emond matter, discussed above, contained the TACs data Brumleve was seeking in relation to the December 2010 express mail issues. Notwithstanding, there is no evidence that Respondent ever called this information to Brumleve's attention, or asserted to any Union representative that indirectly Respondent might have supplied data encompassed in Brumleve's request. Rather, Respondent simply ignored Brumleve's December 4, January 4 and January 25 communications about missing data. Thus the legal argument and case law set forth above in footnote 11 fully applies here. Nor is there any other record evidence that indicates that Brumleve knew, or should have known, that Fruin had received certain TACs on Fruin's thumb drive January 4. Absent Respondent's prompt and orderly response to each steward's request, the grievance procedure inevitably bogs down.

adding the notation "Second request on 1/5/11" at the top (GC Ex. 43, Brumleve, Tr. 405-407). Also, Brumleve placed an asterisk next to the "copies of Express Labels/scan data sheet", denoting that such was one of two items he had not yet received (Brumleve, Tr. 406-407). The other missing data was copies of delivery confirmations not at issue in this litigation.

On January 5, 2011, Brumleve submitted yet another request -- a cover sheet with an attached type-written page, which at that point bore no handwritten entries (GC Ex. 46).

On January 20, 2011, a full month after his initial request, because Brumleve had not been supplied with the documents, he submitted another request, consisting of a cover sheet and an attachment which was a copy of the attachment to the January 5 request, with additional new handwritten entries (GC Ex. 47, TR. 391).

Although at some point, Respondent supplied the express scan data sheets, i.e. the computer printout, it never supplied the express mail labels for these December 15 through 18 dates (Brumleve, Tr. 937).

3. Information concerning Express mail deliveries on dates falling within the period December 20 through January 4, 2011

For some of the dates in this span, the Union requested but did not receive both TAC rings and express mail labels, among other things. For other dates, it just requested and did not receive express mail labels. The allegations concerning the TAC rings for December 20, 21, 22, 23, and 24 are contained in Complaint paragraph 12(e)(1).. The allegations concerning the express mail labels for Dec. 20-24, 27- 31, 2010 and Jan. 3-4, 2011 are contained in Complaint paragraph 12(e)(2)

On January 5, 2011 (GC Ex. 46) and January 20, 2011(GC Ex. 45), the Union submitted the requests which have already been discussed above. As explained, the attachment to the January 5 request as presented that date had a typed section only. The typed portion referred to a variety of dates. In addition to the December 15 through 18 dates discussed above, the additional noted dates were December 20, 21, 22, 23, 24, 27, 28, 29, 30, January 3 and

January 4; these are at issue in Complaint paragraph 12(e). The typed portion requested five categories of documents, including Express mail labels and TAC rings for those dates.

On January 20, 2011, because the Union had only received some of the requested documents pertaining to the dates on and after December 20, Brumleve submitted a two page information request with a cover sheet dated January 20, 2011 (GC Ex. 45). On the attachment, Brumleve added handwritten notes representing that as of January 20, 2011, among other specified items, he had not received TACs rings for 12/ 20, 21, 22, 23 and 24, or the Express mail labels and Express mail scan data sheet for any of the enumerated dates during the period December 15 to January 4, 2011.

As to those TACs which Brumleve had not received as of January 20, 2011, he received none later (Brumleve, Tr. 374,376). Neither did he ever receive the express labels for the stated dates (Brumleve, Tr. 375-376).[20] Brumleve's testimony was not effectively rebutted. As to the TACs, Soto testified vaguely and unconvincingly, without specifics, and proffered only overbroad generalizations (Soto, Tr. 771, 782).

Steward Brumleve has no recollection of Respondent ever seeking clarification of the requests or disputing relevance (Brumleve, Tr. 391). As to both the TACs and the express mail labels, Respondent has not presented evidence that it ever gave any excuse to the Union for not providing these or ever told the Union prior to the arbitration award that the labels were not relevant or available. Neither is there any evidence that Respondent pointed the Union to other sources of the labels.

[20] On cross examination, Brumleve was referred to GC Ex 46, page 2, and the handwritten entries, and was asked "Do you have everything you were missing as of 1/20?" (Tr. 376). Although Brumleve answered "yes", he testified immediately at Tr. 376--which is clear, unrebutted and consistent with his direct testimony at Tr. 374-375 – that he never got these express mail labels or the listed TACs. This latter specific testimony should carry the day over his answer to the general question that lacked specificity.

4. The Union's reasons for requesting certain TAC rings and express mail labels with respect to the Express Mail deliveries in December, and their relevance

In order to prepare for, and substantiate, the express mail grievances in December, while the parties awaited the outcome of the representative grievance arbitration, Brumleve was collecting the same categories of documents that had been available for that proceeding -- including TACs and express mail labels (Brumleve, Tr. 409-415).

A reading of Brumleve's entire testimony and the arbitration award (GC Ex. 56) reflect that data pertinent to the merits of grievances concerning ongoing express mail deliveries by management should include data that would show just what express mail had been delivered by managers, when the mail had been received into the station, what route it was on, whether there were carriers available to do that work on either regular route time or overtime, and who they were. Further, if a violation was found in the representative case, some of the requested information would have significance concerning the remedy, i.e. was the carrier who was regularly on the route at issue, or other carriers, available to make the delivery; had they otherwise been deprived of straight time or overtime work; and were they eligible to be "made whole."

The TACs data

Brumleve testified about what each item in his December 13 request was, and why he asked for it (Tr. 243-247). As to the TAC rings, Brumleve sought those to obtain several pieces of data, including how long a carrier worked; if the carrier was eligible to do the express mail; if the carrier was working at a certain time (implicitly the time management made the express mail delivery); and if that carrier or another was eligible to be paid for the time the express mail was delivered on his route (Brum.Tr. 244). TACs enable the Union to determine, for a given day, who worked, how long they worked, and what routes they were on (Brumleve, Tr. 371).

Even Soto's testimony supports the relevance - he testified that the TACs would be more accurate than the daily schedules, in that the "TACs rings would show the time allocated to each

route by each employee, and who worked on that date, and who was unavailable to work, and who called out sick, and who had annual leave (Soto, Tr. 690)". It would also show which carrier was in the office, and the amount of time spent by each carrier on the route he was assigned (Soto, Tr. 691). In contrast, he seemed to be saying that the daily schedule reflected his plan for the day, but that last minute changes in assignments, such as a change in an hour's assignment from one carrier to another, might only appear on the TACs (Soto Tr. 691-692). Although in self-serving testimony Soto expressed his view that the Union didn't need the daily schedules because the TACS were more accurate, he never effectively countered the Union's testimony that the daily schedules are a snapshot and effective tool to synthesize the data (Soto, Tr. 689-692, 713-715). He never claimed he had discussed any of this reasoning with the Union, or that it played any part in his processing of the requests.

The express mail labels

As to the express mail labels, the sum of Brumleve's testimony is that he sought the labels with respect to dates when management delivered the express mail that the Union claimed carriers should have delivered, in order to obtain the route number on which the express mail was delivered. In turn, once the route involved was identified, the Union could use this to determine whether the regular route carrier- or other carriers assigned to that route that day or a portion of the day- was available to make the delivery and the identity of the carrier. The latter fact also bore on the potential remedy.

The address on the express mail label provides data to determine the route associated with that express mail delivery. The express scan data sheets which encompass deliveries actually made by unit letter carriers do reflect the route number covering the address to which the mail was delivered. (Brumleve, Tr. 939-944, GC Ex.82) In contrast, when a manager delivers a piece of express mail – the conduct in dispute- the route number does not appear; instead code "999" is recorded (Brumleve, Tr. 939-944, GC Ex. 82). In such instances, the Union knows the express mail was delivered by management, but cannot identify the number of

the route affected unless it has the express mail label with the address (Brumleve, Tr. 939-944). Although the label does not give the route number, apparently the Union knows which address goes with each route. One carrier is customarily assigned to a route on an ongoing basis (Brumleve, Tr. 939). Thus it is this route number that will disclose what carrier was arguably eligible to deliver the express mail (Brumleve Tr. 939-943).[21]

The express scan data sheets, while useful, do not contain a key item – the address to which the mail was delivered (Brumleve, Tr. 937-944; GC Exs. 81, 82). Soto concurred on this (Soto, Tr. 770). Accordingly, it is beside the point that Respondent had supplied the express scan data sheets.

In sum, the express mail labels for multiple dates in December were directly relevant to both the merits and the potential remedy in the express mail grievances that were being investigated, documented, filed at Informal A, and held in abeyance at Formal Step A while awaiting the representative grievance award. Because the express mail deliveries were a daily issue, and grievances would depend on detail, obviously the Union could not afford to get behind in the documentation of this dispute.

5. The judge's decision concerning the express mail matter should be rejected.

The judge decided that "the Employer did not illegally withhold information inasmuch as the grievances to which they were attached, had been, by mutual agreement, held in abeyance and it was probable that the information would become irrelevant if the Union lost the 'representative' arbitration case (ALJD 9:23-27). He asserted there "really was no point in furnishing information during this period of time, even if potentially relevant, [footnote omitted] as it had been agreed that all of the other cases would not have been processed until there was a decision in the representative case" (ALJD, 9:16-19).

[21] Although at one point Soto gave his view that the addresses on the express mail labels weren't needed, his explanation did not hold up. He did not claim the address had no use, merely that it needed to be supplemented by further information as to whether the person assigned to the route had been available to do the express mail or whether that person was on the overtime list to deliver that piece of mail (Soto, Tr. 714-715).

Once again, the judge invented a defense for Respondent that it never advanced, is not based on facts, interferes with the grievance process and is an affront to the autonomy of the parties' collective bargaining relationship. The judge's rationale is merely his own view about an agreement that he wishes the parties had made, but did not.

Contrary to the judge, there was a point to the Union collecting the relevant information contained in the TACs and the express mail labels. Union steward Brumleve was working diligently and in an orderly fashion to gather all the documentation necessary to process grievances about specific dates on which managers had delivered express mail before moving the grievances up to Formal Step A, where the grievances would then be held in abeyance. An inference can be drawn from the record evidence that staying on top of each incident involved amassing considerable evidence on a high volume of grievances. If the Union won the representative grievance, it would have been daunting to reconstruct the facts retroactively, even to determine the remedy.

Importantly, it was the parties' agreement to hold the grievances in abeyance once they got to Formal Step A, not at Informal Step A or in some "uninvestigated" state before filing. There is absolutely no evidence of any agreement not to provide the information as was customary before Formal Step A -- and as Brumleve testified, the Union had to check its facts before deciding if there was something to grieve. The parties' grievance procedure concerning representative grievances (GC Ex. 2(a), Art. 15 Grievance Arbitration Procedure, Section 3(D), pp. 70-71) contains no provision for Respondent to hold off on supplying information for related grievances. Certainly the parties were capable of coming up with the idea of holding off on sharing information- they did not. The judge cannot make that agreement for them. Respondent did not advance any excuse to the Union or defense at trial, or in its brief, that parallels the judge's creation. The Judge's decision offends the parties' right to craft their own agreement.

E. The requests for information concerning the Loretta Gray-Williams December 2010 discipline

These requests for information involve a letter of warning issued on December 17 to Dixwell Avenue-Hamden Carrier Loretta Gray-Williams. The allegations are contained in Complaint, as amended, at paragraphs 11(a)(1),(2), (6),(7),(8), (9), and (10) and conclusory paragraph 16, alleging a failure to timely provide the information.

In December, new Alternate Steward Jess Friedman made three requests for information which together encompassed several categories- they were made on December 18, 21 and 23. The grievance was submitted at Formal Step A without the requested documents, and on January 6 remanded by the Formal Step A team with a commitment that management would provide all requested documents (GC Ex. 28).

Respondent did not provide Friedman with the requested documents until the period January 21- 22, 2011, which was month or so after his requests (Friedman, Tr. 504-511). The Judge states that the documents were received between January 16 and 28, and seems to ignore Friedman's more specific testimony (ALJD 14: 8-11). This gave Friedman a condensed time to review documents before moving it back up to the Formal Step A (Friedman, Tr. 507). In fact, he appealed the grievances in incomplete form (Friedman, Tr. 510).

Eventually, on March 4 2011, not long after the information was supplied, the parties at Formal Step B settled the grievance (GC Ex. 65). Respondent never challenged relevance or sought clarification. Neither did it ever explain the delay to the Union (Friedman, Tr. 542).

The Judge's recommendation to dismiss the allegations involving the Loretta Gray Williams discipline information should be rejected.

The judge concluded that the one month delay in Respondent providing the multiple items requested did not violate the Act (ALJD 14: 7-18). He appears to rely in part on the conclusions that: 1) all the documentation went to Formal Step A representatives, which was adequate even assuming that Steward Friedman may or may not have had a full opportunity to

review it (ALJD 14: 11-15); and 2) the one month or so delay was not unreasonable, particularly as part of it encompassed the Christmas/New Years holidays.

As to the judge's conclusion that it was sufficient that the Formal Step A representatives had the documents, effectively he has instituted a new guideline for the parties that removes Respondent from any obligation to provide documents before the eve of Formal Step A. That does a disservice to the orderly functioning of the grievance procedure, which counts on the steward amassing and marshalling documentary and other evidence before Formal Step A. Indeed, the contract at Article 15, Section 2-"Grievance Procedure Steps - Informal Step A" (p. 66), requires that grievances be initiated within 14 days, encourages the parties there to jointly review "all relevant documents to facilitate resolution of the dispute", whereas Section 2 "Formal Step A" subsection (d) (p. 67) specifically provides for the exchange of all documents in accordance with Articles 17 and 31. In turn, Article 17, Representation, Section 3 (p. 84) also calls for stewards to have access to documents to process a grievance or see if a grievance exists. Thus, before formal Step A the steward's actions are key to the process' success - any remands and the tardy supply of documents presents an undue handicap.

As to the judge cutting Supervisor Joseph some "slack" (ALJD 14: 16-18), there would be some basis to do so if she had actually testified that the holidays and her staffing shortage and busy-ness from December 2010 to February 2011were in fact the reasons for the delay in providing information to Freidman. Although she described these periods, particularly from November to December, she did not state that they caused the delay (Joseph, Tr. 803-823, 831-834). Indeed, three weeks of the delay fell in January 2011.

F. The requests for information concerning Friedman's grievance about his December 20 assignment and the Respondent's failure to follow the New Haven bumping procedure

These requests involve an instance when Steward Jess Friedman challenged his own December 20 work assignment, and requested multiple related categories of information. The allegations are contained in the Complaint, as amended, at paragraphs 11(a)(3), (4), (5),(11),

(12), and conclusory paragraph (15) alleging a failure to timely provide this information. There was a month delay in Respondent providing requested information.[22]

The judge's recommendation to dismiss the allegation related to the Friedman December 20 assignment should be rejected.

The judge concluded that Respondent was not untimely when it supplied the requested documents related to Steward Friedman's assignment a month after the request (ALJD 12: 4613:1-2). He concluded that there was no statutory violation, because the Formal Step A representatives had time to review the information, regardless of whether there was time for Friedman himself to review it before moving the grievance to Formal Step A (ALJD 12, 44-45). It appears that the judge also gave some weight to other factors - the request having been made right before Christmas, and the Formal Step A team's January 2011 agreement to remand the matter with commitment that the information would be made available (ALJD 12:40-41).

The judge also found two items in the long series of documents requested (the TACs and Daily Boards at the two facilities on the days in question) lacking relevance on the basis that there was no dispute that Norris was given the assignment Friedman claimed (ALJD 12: footnote 10), and that these documents went to that undisputed fact.

As to the claimed lack of relevance of the TACs and daily boards [schedules] the Judge's decision is not well founded. The Union cannot rely on oral representations of supervisors or manager, as these grievances are expected be moved up the steps with a packet of documents that must be self-sufficient. Also, it is not clear on when the Norris assignment became "undisputed". Indeed, it appears that Friedman wrote up the "undisputed fact" section of the grievance after he got the documents on January 20-21, (after the one month delay),

[22] As to the bearing of the computer-generated Mt. Carmel TACs data copied by Respondent onto Step A Representative Fruin's thumb drive on January 4 in the context of the Emond matter, there was no testimony presented or argument made that the delayed Mt Carmel-based TAC rings (i.e. TAC rings for the carriers on route 1871 in Mt. Carmel PO on December 20 or Charles Norris' TAC rings for November 24 and December 4) would have appeared amid the data supplied to Fruin. Even though such is possible, there is no evidence that Respondent was aware of potential duplication or that it ever called this to Friedman's attention. Neither is there evidence Friedman knew or should have known about this. See discussion infra with respect to Fruin's request involving the router matter and Brumleve's request for TACs concerning the express mail issue.

because that section references Charles Norris's and Friedman's TACs rings for 12/20, as well as the daily boards for that date (GC Ex. 71, block 16) which Friedman had just received. Thus, by time Friedman advanced the grievance to the Formal Step A, not only was the Norris assignment to Route 1871 undisputed but now, at the eleventh hour, it was also documented (Tr. 527).

The judge is also inconsistent in how he deals with the issue of relevance where a grievance has initially moved to Formal Step A but then is remanded for documentation. In the allegation involving the Gray-Williams discipline, the judge basically observed that he would not second guess the view of the Formal Step A representatives that information was relevant, as was implicit in their specification in the remand that documents would be supplied (ALJD14: footnote 11). Yet here, the Formal Step A team also remanded the Friedman grievance with a commitment to provide the documentation (GC Ex. 28), but the judge does second guess the representatives on relevance by concluding that the TACs and daily boards were not relevant. Contrary to practice, he sets up a new rule that orally undisputed facts needn't be documented.

The judge's additional rationale, i.e. that it was sufficient that the Formal Step A representatives had the information before them, effectively modifies the parties' grievance procedure. The contract and the JCAM urge prompt resolution of grievances at the lowest steps, which delaying information will not foster. Further, getting the documents at the eleventh hour for presentation at Formal Step A is unreasonable.

There is no evidence that Respondent ever sought clarification of the request or challenged relevance. Respondent never gave Freidman any reason for the delay (Friedman, Tr. 542).[23] The judge's reference to the requests being made right before Christmas is beside the point, as the documents were not delayed just one or two weeks, but a month, most of

[23] At trial, Respondent's witness Dixwell Avenue –Hamden Supervisor Lillian Joseph seemed to try to attribute the delay to her use of a protocol of asking the Mt. Carmel facility for Charles Norris's TACs which are based there. She never cast this as a requirement until led directly into a statement of such by her counsel (Joseph, Tr. 830).

which fell in January. Indeed Respondent witnesses never testified that the Christmas season actually caused the delay.[24]

G. The requests for information concerning the Loretta Gray-Williams January Overtime issues

This allegation involves overtime lists which were requested with respect to an issue that arose in January 2011, involving the claimed failure of management to give overtime work to Loretta Gray-Williams. The allegations are contained in the Complaint, as amended, at paragraph 11(b) and conclusory paragraph 15, alleging a failure to supply the requested information.

Gray-Williams claimed she had missed out on overtime, even though she had asked to be put on the overtime lists. Friedman asked for the overtime lists in writing on February 3, but Respondent never supplied them (Freidman, Tr. 547, 549,- 551, 970; GC Ex. 29). When Friedman filed the grievance on February 9, he asserted that Gray-Williams was on the lists but did not attached them as an exhibit, as the form calls for. (GC. Ex. 73, grievance #19-092-11-HAM, block 16), which supports his account. Supervisor Joseph testified "round about" on this, but never said that she had turned over the lists (Joseph, Tr. 840-841, 862-867).

Freidman testified that although management had at some point orally admitted that Gray-Williams had put in a slip to be put on the lists, this was inadequate to prove what had occurred. Instead, he needed documentation that she was or was not on the list (Tr. 547-548. 551-552). He prepares his grievance document packets as if the grievance will go all the way to Formal Step B (Tr.972-973). Quite simply, the requested lists would have demonstrated whether management had ever actually put Gray-Williams' name on the list, rendering her eligible for overtime (Friedman, Tr. 546, 970). The JCAM - Article 17 identifies overtime lists as items to be supplied (GC EX. 79).

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[24] Joseph testified about her busy season and responsibilities, but she never states that the Christmas was a reason for the one month delay – she just described her busy season which by her own account ended before the end of December and never directly claimed that the staffing situation was in any way linked to the delay!

The judge's recommendation concerning the information pertaining to Gray-Williams overtime assignments should be rejected.

The Judge concluded that because there was no dispute about the fact that "Gray-Williams had sent the note and that she should be on the overtime desired list", documents to prove the conceded fact were simply redundant, unnecessary and irrelevant (ALJD 14: 45-46; 15: 11-13). He also relied on the absence of evidence that the Formal Step A representatives lacked information to resolve the grievance. (ALJD 15 : 5-7). CONFUSING?? He recommended dismissal.

The judge's decision is flawed in that it fails to recognize that the parties' elaborate grievance procedure, which moves within strict time limits, relies heavily on a documented record at Formal Step A and Formal Step B, not on oral representation by supervisors. As noted above, even the grievance form under "Undisputed Facts" specifies "List and attach all supporting Documents" (GC Ex. 73). Indeed, it is not so clear that Gray-Williams name had actually been physically placed on the overtime lists when it should have been. Just because the parties settle a case without a document does not reflect that a document was irrelevant or would not have reasonably useful.

Relevance is straightforward. As the JCAM for Article 31 recognizes, the lists were building blocks for the Union. Friedman was making a reasonable judgment that the Union needed a copy of the overtime lists to document Gray-Williams' status for the grievance procedure. The overtime lists should have been available in an instant. Respondent has never explained why they were not supplied. The Union should not have to chase after this information. Indeed, the Formal Step A team still did not have the list, in contrast to the Friedman's grievance about his December 20 assignment, where the judge emphasized that the Formal Step A team did have the tardily supplied documents that were missing earlier. The judge is crafting a new approach for the parties – legitimizing the Respondent's failure to supply documents where the facts are purportedly uncontested in oral representations. If Respondent adopts the judge's standard, the information request process will become even more complex.

III. The Appropriate Remedy

The remedy sought, but denied by the judge, includes an Order requiring Respondent to: 1) post at all main, branch and station facilities in its New Haven, Connecticut Post Office any Notice to Employees which issues; and 2) to send a copy of any Board Order and Notice to all its supervisors at its main, branch and station facilities in the New Haven Post Office. The remedy should not be limited to just the two facilities (Mt. Carmel and Dixwell Avenue – Hamden) at issue in the instant case. The New Haven-wide remedy is warranted because: a) Respondent has failed to meet commitments it made in a prior formal settlement involving other New Haven Post office branches; b) there is extensive interchange of Respondents' supervisors and managers among the different New Haven Post Office branches, as well as some interchange of employees; and c) Respondent has a history of recidivism nationwide with respect to failures to supply information.[25] Because the Union no longer needs the information that was not supplied, the requested remedy does not include an affirmative order to supply particular information.

Concerning the prior Formal Board settlement and related orders, in April 2009, following the issuance of a consolidated complaint, Respondent entered into a Formal Settlement in Case Nos. 34-CA-12097 and 34-CA-12166 with respect to alleged failures to supply information at three branches of the New Haven Post Office, Westville, Amity and Allingtown (GC Ex. 67). In that Formal Settlement, Respondent committed to cease and desist from failing to provide the Union, and failing to supply the Union in a timely manner, with information that was necessary and relevant to the Charging Party's representation of the employees at those three facilities. The three facilities are among approximately eight or nine branches of the New Haven Post Office. Further, in that Settlement, Respondent made an affirmative commitment to supply such information at those locations. The Settlement further

[25] Because most of the grievances were ultimately either settled or resolved by rulings at the higher steps of the grievance procedure (and in the case of the express mail grievances, withdrawn) the Union no longer has any use for the documents which were never supplied. Thus, Counsel for Acting General Counsel is not seeking an order that Respondent supply specific documents.

provided for the posting of a specific Notice to Employees at the three branches and entry of a consent order by the Board and a consent judgment by the appropriate United States Court of Appeals (GC Ex. 67).

The anticipated Board Decision and Order issued on June 22, 2009 (GC Ex. 68), a two-member Decision.[26] Thereafter, on January 6, 2010, a consent judgment was entered by the US Court of Appeals for the Second Circuit against Respondent, enforcing the Board's Order. The Court ordered that Respondent by "its officers, agents, successors and assigns shall abide by and perform the direction of the Board set forth in its order..." (GC Ex. 69).

Despite Respondents 2009 commitments, the 2009 Board order, and the Court's January 2010 enforcement order, later in 2010 and into the first few months of 2011, as alleged in the instant Complaint, Respondent continued to engage in the same type of unlawful conduct at two different New Haven facilities. It failed to supply, as well as failed to timely supply, certain relevant information to the Union.

The concept of an escalating remedial order which builds upon a prior remedy to which a party agreed is logical. See extensive discussion in Pennant Foods Company, 352 NLRB 451, 472-473 (2008) (two-member Board adopts judge's decision granting "special remedies" partly in reliance on similar level of remedies in prior settled case). That judge's reasoning and approach should be followed here. In light of Respondent's failure to meet its earlier settlement commitments, an escalating remedy – expanding the Order and Notice to encompass other facilities within the same Post Office - is well suited to the facts of this case.

In this regard, where an employer has entered into a settlement agreement, even with a "nonadmissions" clause, it is undertaking a commitment not to engage in certain types of unlawful conduct. See reasoning of judge in Pennant Foods, supra , 473 at note 47. Clearly

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[26] Board Chairman Wilma Liebman noted that the remedy to which the parties had agreed was not fully consistent with previous broad orders which the Board had issued against Respondent, which had been enforced by the Courts of Appeals and remained in effect (GC Ex. 68, note 3, slip opinion 2). Those cited broad orders were in an unpublished decision and in United States Postal Service, 345 NRLB 426 (2005), enfd. 486 F. 3d 683 (10th Cir. 2007).

Respondent's promise and the related Board and Court orders did not induce Respondent within its New Haven Post Office - i.e. the same administrative structure as before – to refrain from the same type of unlawful conduct at other New Haven Branches, i.e. Mt. Carmel and Dixwell Avenue-Hamden facilities.

Indeed, Manager Soto, who was serving in management at Westville at the time of events there which led in part to the 2009 formal settlement and Board and Court orders, is directly involved in some of the instant allegations involving Mt. Carmel (Soto, Tr. 790, 632-634).[27] His testimony herein indicates that either he was oblivious to the outcome of the prior case, improperly kept up to date by his superiors, or forgetful. [28] Whichever, it appears from this testimony, as well as events herein, that Respondent's 2009 commitment made little impression on him. A stronger remedy here will present more of a lasting impression.

Respondent presented no evidence as to measures taken to ensure compliance with the 2009-2010 Settlement Agreement commitments, Board order or Court order. Thus this case is distinguishable from United States Postal Service, 354 NLRB No. 58 (2009) (no district wide posting, given record evidence of Respondent's ongoing efforts to ensure prompt replies to union information requests).

[27] Current Union Formal Step A Representative Fruin was also familiar with the facts at Westville in 2009 that underlay the Formal Settlement, and with Soto's involvement (Fruin, Tr. 173).

[28] Soto testified on cross-examination in the instant case that he did not think he was aware of the 2009 Formal Settlement until after the filing of the charge in the instant case (Soto, Tr. 790). The instant charge was filed February 9, 2011. Yet then Soto then contradicted himself, stating that he became aware of it by virtue of the notices posted (Tr. 790).

As to the bearing of interchange on the requested New Haven-wide remedy, the testimony herein establishes that there is considerable interchange among the supervisors and managers of the Branch facilities comprising the New Haven Post Office. In this regard Manager Soto, Supervisor Camerato, Supervisor Greco, Supervisor Millett and Manager Bernardo have all moved back and forth among several branches in their supervisory and managerial roles (Brumleve, Tr. *225*- 226,326 403-408; Respondent's Answer -GC Ex. 1(i), at paragraph 6; Soto, Tr. 632-634, 719, 720, 790-791; Respondent's Answer -GC Ex. 1(i); Joseph, Tr. 804; Bernardo Tr. 871-872). Also, managers report to one manager of customer service operations (the MCSO) at the central New Haven Post Office.

There is also some carrier movement among facilities (Soto, Tr. 672). For example, as addressed above, carrier Jess Friedman works at two facilities, and carrier Emond, who had been working at Mt. Carmel, is now working at another branch. Even Respondent witnesses referred to the option of getting carrier assistance from other branches.

If supervisors or managers who were previously at Mt. Carmel and Dixwell Avenue, relocate to another facility before any Order issues, or like Soto are already elsewhere, then a Notice posting at only those two facilities would likely escape their awareness. Indeed if Soto remains at Westville, he will not see a Notice that is only posted at Mt. Carmel and Dixwell Avenue. Given Soto's testimony indicating that he was not aware of the Court order in the prior case until after the instant charge was filed, a wide broadcast within the relatively small New Haven Post Office would enhance the chances that the seriousness of the obligations to supply information would not elude "moving" managers. Further, carriers, stewards, and Union representatives at all the New Haven facilities should have confidence that if they move or their supervisor or manager changes, their Union's statutory rights remain constant.

With respect to the Postal Service, the Board has issued a district-wide posting based specifically on a prior finding of a similar unfair labor practice in the same postal district. See *United States Postal Service*, 339 NRLB 1162 (2003) (postings required at facilities throughout

the Houston Postal District). Indeed, by Respondents stipulation as to its structure, the New Haven Post Office is not even a district, but rather is a much smaller, less encompassing unit of eight or nine facilities within the Connecticut Valley District. As there are limited facilities at issue, no onerous affirmative obligations will be imposed on Respondent. In balancing the equities, the post-office wide remedy is appropriate.

Also of bearing is Respondent's nationwide recidivism which tilts the instant case toward the requested New Haven-wide remedy. In view of Respondent's long history of recidivism nationwide as to unlawful conduct involving requests to provide information, Respondent should not prevail in its efforts to narrow any remedy to just those two New Haven branches where the instant violations occurred. In this regard, although Counsel for Acting General Counsel is not seeking a broad cease and desist order based on Respondent's proclivity to violate, that proclivity has been clearly established. See *United States Postal Service*, 339 NLRB 1162, 1163 (2003), as well as more recently in *United States Postal Service*, 352 NLRB 923, 972 (2008); *United States Postal Service*, 345 NRLB 409, note12 (2005). See also cases cited by the judge in *United States Postal Service*, 352 NLRB 923 (2008). That proclivity warrants imposition of a New Haven-wide remedy.

In sum, the remedial goal of a New Haven-wide remedy is to secure a different pattern of behavior in New Haven in the future that complies with the statutory dictates of the Act.

IV. CONCLUSION

Based upon all of the above, Counsel for the Acting General Counsel respectfully requests that the Board not accept the judge's recommendation of dismissal as to the allegations involving Carrier Emond (Complaint paragraph 13(a)); express mail (Complaint paragraph 12(a),(d) and (e)); router time (Complaint paragraph 13(b) and (c)); Jess Friedman's December 20 assignment (portions of Complaint paragraph 11(a)); Loretta Gray-Williams warning (portions of Complaint paragraph 11(a)); and Gray –Williams overtime assignment (Complaint paragraph 11(b)). It is requested that the Board issue a Decision and Order with

appropriate findings of fact and conclusions of law, that Respondent has violated Section 8(a)(1) and (5) with respect to those allegations, as well as with respect to the allegations concerning Jess Friedman's December 20 assignment (Complaint paragraph 12(c)), concerning which the judge recommended a violation be found and to issue the requisite remedial order, as described above.

Dated at Hartford, Connecticut, this 14th day of May, 2012.

Respectfully submitted,

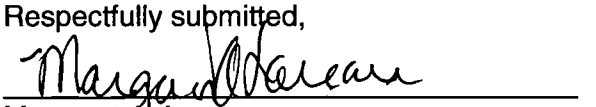

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TABLE OF CASES

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

UNITED STATES POSTAL SERVICE **and** **NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 19**	**Case No. 34-CA-12912**

COUNSEL FOR ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8 as amended, Counsel for Acting General Counsel excepts to the Decision and Order of Administrative Law Judge Raymond P. Green on the following points:

1. The judge's conclusion that Respondent had not violated the Act except as found in his first and second conclusions of law (ALJD 16:9-18); and the judge's failure to conclude, with respect to the Emond matter, that Respondent violated Sections 8(a)(1) and (5) by failing to timely to provide certain TACs rings for the period beginning June 24, 2010, as alleged in the Complaint, as amended (herein the Complaint) paragraph 13(a)(1) and conclusory paragraph 16.

2. The judge's failure to conclude, with respect to the Emond matter, that Respondent violated Sections 8(a)(1) and (5) by failing to timely provide mail volume reports for June 24 through July 31, 2010, as alleged in Complaint paragraph 13(a)(2) and conclusory paragraph 16.

3. The judge's failure to conclude, with respect to the router time matter, that Respondent violated Sections 8(a)(1) and (5) by failing to timely provide TACs rings for the period July 31, 2010 to September 13, 2010, as alleged in Complaint paragraph 13(b) and conclusory paragraph 16.

4. The judge's failure to conclude, with respect to the router time matter, that Respondent violated Sections 8(a)(1) and (5) by failing to timely provide TACs rings for the period July 31, 2010 to September 13, 2010, as alleged in Complaint paragraph 13(b) and conclusory paragraph 16.

5. The judge's failure to conclude, with respect to the router time matter, that Respondent violated Sections 8(a)(1) and (5) by failing to timely provide daily schedules for the period as alleged in Complaint paragraph 13(d) and conclusory paragraph 16.

6. The judge's failure to conclude, with respect to the express mail matter, that Respondent violated Sections 8(a)(1) and (5) by failing to supply TAC rings for December 7 through 10, 2010, as alleged in Complaint paragraph 12(a)(1) and conclusory paragraph 15.

7. The judge's failure to conclude, with respect to the express mail matters, that Respondent violated Sections 8(a)(1) and (5) by failing to supply express mail labels for December 15, 16, 17 and 18, as alleged in Complaint paragraph 12(a)(d) and conclusory paragraph 15.

8. The judge's failure to conclude, with respect to the express mail matters, that Respondent violated Sections 8(a)(1) and (5) by failing to supply TAC rings for December 20, 21, 22, 23 and 24, 2010, as alleged in Complaint paragraph 12(e)(1) and conclusory paragraph 15.

9. The judge's failure to conclude, with respect to the express mail matters, that Respondent violated Sections 8(a)(1) and (5) by failing to supply express mail labels for December 20-24, 27-31, 2010 and January 3-4, 2011 as alleged in Complaint paragraph 12(e)(2) and conclusory paragraph 15.

10. The judge's failure to conclude, with respect to the Loretta Gray-Williams December 2010 discipline, that Respondent violated Sections 8(a)(1) and (5) by failing to timely provide the "3996 forms" for Hamden carriers for December 16, 2010, the information relied on in issuing discipline to Gray-Williams, the letter of warning issued to Gray-Williams dated December 16, 2010, Gray-Williams "1571" form for December 16, 2010, the "Route 1410 MSP Scan Sheet", TAC rings for December 16, 2010 and "Hamden Daily Board" for 12/16/10, as alleged in Complaint paragraphs 11(a)(1), (2), (6), (7), (8), (9) and (10) respectively and conclusory paragraph 16.

11. The judge's failure to conclude, with respect to the Friedman December 20 assignment that Respondent violated Sections 8(a)(1) and (5) by failing to timely provide the Mt. Carmel branch "daily board" for November 24, 2010 and December 4, 2010; the Mt. Carmel branch "daily board" for December 20, 2010; the "TAC rings" for Charles Norris for November 24 and December 4, 2010; the Hamden Daily Board for December 20, 2010; the TAC rings of employee Jess Friedman for December 20, 2010; and the TAC rings for the carrier(s) on route 1871 in Mt. Carmel PO on December 20, 2010, as alleged in Complaint paragraph 11(a)(3),(4),(5), (11), (12) and (13) respectively and conclusory paragraph 16.

12. The judge's failure to conclude, with respect to the Loretta Gray-Williams matter, that Respondent violated Sections 8(a)(1) and (5) by failing to supply the work

assignment list for the first quarter of 2011 and the overtime desired list for the first quarter of 2011, as alleged in Complaint paragraphs 11(b)(1) and (2) respectively and conclusory paragraph 15.

13. The judge's failure to grant the correct remedy, specifically, an Order requiring Respondent to: 1) post at all main, branch and station facilities in its New Haven, Connecticut Post Office any Notice to Employees which issues; and 2) to send a copy of any Board Order and Notice to all its supervisors at its main, branch and station facilities in the New Haven Post Office. The remedy should not be limited to Mt. Carmel where the Judge found the sole violation, as the Judge ordered (ALJD 16 :20 to 17:23).

14. The judge's failure expressly to find that all the requested information at issue in the Complaint was relevant.

15. The judge's express findings that the following information was not relevant:

- the information the concerning the Emond matter (ALJD 8:12-17;
- the information concerning the router issue until the second grievance was filed (ALJD 11, 1-10);
- the information concerning the express mail issue (ALJD 9; 12-27);
- as to the Friedman December 20 assignment, TAC rings and daily board for the Hamden and Mt. Carmel facilities on the December days in question (November 24, December 4 and December 20);
- as to the Gray-Williams' overtime assignment issue, the overtime lists ALJD 14:45-46; 15: 11-13).

16. The judge's failure to make express findings as to the prior Settlement Agreement and related Board Order and Court judgment.

17. The judge's failure to make express findings concerning the extensive interchange of supervisors and managers among the facilities, and the existence of employee interchange as well.

18. The judge's failure to find that Respondent did not provide Steward Friedman with the documents requested with respect to the Gray-Williams December 2010 discipline until January 21-22, 2011, rather than the judge's more general finding that they were received between January 16 and 28 (ALJD 14:10).

19. The judge's failure, with respect to the Emond matter, to make an express finding that Respondent did not supply the requested mail volume reports until a period beginning in February/March 2011.

20. The judge's finding, with respect to the router matter, that the initial router grievance was withdrawn in the latter months of 2010, the matter became inactive, and this obviated the Union's need for the information (ALJD 11: 1-8).

21. The judge's finding that the parties typically extended grievance deadlines (ALJD 4: 44-45; 22-23).

Dated at Hartford, Connecticut this 14th day of May, 2012

Respectfully submitted,

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